

**Rambler, Alexis**

**From:** PSC\_Contact  
**Sent:** Wednesday, July 14, 2021 9:09 AM  
**To:** PSC\_Contact  
**Subject:** FW: [External] RE: CHOD - Order Holding Prefiling in Abeyance - DN 2021-88-E -Order No. 2021-96-H

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**From:** Butler, David <David.Butler@psc.sc.gov>  
**Sent:** Tuesday, July 13, 2021 6:50 PM  
**To:** PSC\_Contact <Contact@psc.sc.gov>  
**Subject:** Fwd: [External] RE: CHOD - Order Holding Prefiling in Abeyance - DN 2021-88-E -Order No. 2021-96-H

Sent from my iPhone

Begin forwarded message:

**From:** Mitchell Willoughby <[mwilloughby@willoughbyhoefer.com](mailto:mwilloughby@willoughbyhoefer.com)>  
**Date:** July 13, 2021 at 4:58:37 PM EDT  
**To:** "Butler, David" <[David.Butler@psc.sc.gov](mailto:David.Butler@psc.sc.gov)>  
**Cc:** "Grube-Lybarker, Carri" <[clybarker@scconsumer.gov](mailto:clybarker@scconsumer.gov)>, "Hall, Roger" <[RHall@scconsumer.gov](mailto:RHall@scconsumer.gov)>, "Huber, Christopher" <[chuber@ors.sc.gov](mailto:chuber@ors.sc.gov)>, "Pittman, Jenny" <[jpittman@ors.sc.gov](mailto:jpittman@ors.sc.gov)>, [court.walsh@nelsonmullins.com](mailto:court.walsh@nelsonmullins.com), Weston Adams <[weston.adams@nelsonmullins.com](mailto:weston.adams@nelsonmullins.com)>, [richard@rlwhitt.law](mailto:richard@rlwhitt.law), Tracey Green <[TGreen@willoughbyhoefer.com](mailto:TGreen@willoughbyhoefer.com)>, "Parker, Connor" <[cjparker@scconsumer.gov](mailto:cjparker@scconsumer.gov)>, "J. Blanding Holman" <[bholman@selcsc.org](mailto:bholman@selcsc.org)>, [kmixson@selcsc.org](mailto:kmixson@selcsc.org), [Eclancy@selcsc.org](mailto:Eclancy@selcsc.org), [bholman@pgrenewables.com](mailto:bholman@pgrenewables.com), [chad.burgess@dominionenergy.com](mailto:chad.burgess@dominionenergy.com), [matthew.gissendanner@dominionenergy.com](mailto:matthew.gissendanner@dominionenergy.com)  
**Subject:** [External] RE: CHOD - Order Holding Prefiling in Abeyance - DN 2021-88-E - Order No. 2021-96-H

David,

The Company has received your Directive Order No. 2021-96-H holding in abeyance the requirement that CCEBA (and all other parties) file direct testimony on July 13, 2021. The practical effect of this order is to, in part, grant the relief sought by CCEBA (and joined by CCL/SACE).

We are truly sorry that you and the Commission are being asked to address an issue that we believe was entirely avoidable. CCEBA did not consult with the Company prior to filing its motion. If CCEBA had only consulted with the Company before filing the motion for additional time, the Company would have gladly consented to that request and jointly approached the Commission with CCEBA to propose a modified filing schedule. Instead of contacting the Company first, CCEBA filed a motion that goes beyond just seeking more time and instead hurls allegations of bad conduct on the part

of DESC that are unwarranted and unsupported by the current record. In fact, they are nothing more than baseless falsehoods purely designed to prejudice DESC to the Hearing Officer and the Commission and with other parties.

Because of the baseless allegations of bad conduct, we must respond, and will do so in a timely manner, to refute the gross falsehoods included in the motion and the effort by CCEBA to prejudice DESC. We recognize that you did not have the benefit of our response before issuing the Hearing Officer's order.

In an effort to justify its filing of discovery late in the process, CCEBA grossly mischaracterizes the procedural history of this matter. For one example, CCEBA states falsely that the Company originally was supposed to file its direct testimony on June 7, 2021, but was afforded more time by the Commission through a non-existent "Directive Order 2021-88-E" issued on June 16, 2021. All of CCEBA's false contentions and suggestions regarding the early filing requirements and the Company's filing of its direct testimony are based on the deadlines applicable to the Duke Energy Progress and Duke Energy Carolinas docket even though it knew that the original testimony deadlines for this docket have remained unchanged since Order No. 2021-166.

CCEBA filed its petition to intervene in this docket on April 20, 2021, and was served with DESC's Application that was filed on April 22, 2021. If one wished to be charitable and believe that CCEBA may have misread Commission Order No. 2021-166, it cannot escape the fact that the testimony filing dates were clearly set forth in DESC's Application. So, CCEBA has known since at least April 22, 2021 that its testimony was due on July 13, 2021. Notwithstanding this fact, CCEBA filed its first discovery request on June 28, 2021. Simply put, DESC is not responsible for CCEBA ignoring the applicable filing deadlines and then deciding to engage in this proceeding late, and then trying to "catch up" by filing discovery demands that are not even due until after its testimony should have been filed. That is CCEBA's fault, not DESC's, and the Commission should not excuse CCEBA's disregard of the Commission's practices.

Based on when the discovery requests were served, DESC's responses to CCEBA's first set of discovery are not due until July 19, 2021, which is 6 days after CCEBA's direct testimony was due, and responses to CCEBA's second set of discovery are not due until July 22, 2021, which is 9 days after CCEBA's direct testimony is due. Nevertheless, on Friday, July 9, DESC responded to a request from CCEBA and made available to CCEBA certain discovery that had been provided to the other parties earlier that same day.

CCEBA also fails to inform the Hearing Officer and the Commission that, despite the tardy discovery requests, it has already been given substantially all the documents and materials pertinent to this matter that have been made available to other parties that timely sought and received information from DESC. In its motion, CCEBA quotes directly from discovery provided to the DCA. See Paragraph 11 of the CCEBA motion. And, on a call on Friday, July 9, CCEBA's counsel confirmed to DESC's counsel that CCEBA had in fact been given access by another party to the discovery responses provided to the other parties prior to that date.

Having had an opportunity to review CCEBA's unfair and incorrect motion, counsel for DESC informed counsel for CCEBA on the July 9<sup>th</sup> call and in follow-up emails that CCEBA's motion included false and misleading statements to which DESC would respond and specifically identified the patently false statement in Paragraph 16 of the

motion that DESC had not done “what it committed to do in its responses to discovery served by other intervenors.” To date, there has been no effort of which DESC is aware of CCEBA attempting to correct the falsehoods included in the motion. All of that said, if CCEBA had called prior to filing its baseless motion and said it needed more time, it not only would have received cooperation for an extension request, but also would have learned that it has much of the information that it seeks through the responses to the discovery of other parties, and the need for a contentious motion could have been avoided. But maybe a contentious motion was CCEBA’s goal and maybe the truth is of no concern to it.

All of that said, DESC plans to file a reply to the motion by the end of this week. In its reply, it will not object to a delay of 2 weeks as long as it is not prejudiced by the delay and it is given a full 2 weeks in which to file its rebuttal testimony.

Again, we regret that you and the Commission are having to deal with an issue that could have been avoided if CCEBA had followed the professional protocols required by the South Carolina Rules of Civil Procedure. Please let us know if there are questions prior to DESC filing its reply by Friday, July 16, 2021. With warmest regards,

Mitch



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**From:** Butler, David <[David.Butler@psc.sc.gov](mailto:David.Butler@psc.sc.gov)>  
**Sent:** Monday, July 12, 2021 4:24 PM  
**To:** [chad.burgess@dominionenergy.com](mailto:chad.burgess@dominionenergy.com); [matthew.gissendanner@dominionenergy.com](mailto:matthew.gissendanner@dominionenergy.com); Grube-Lybarker, Carri <[clybarker@scconsumer.gov](mailto:clybarker@scconsumer.gov)>; Hall, Roger <[RHall@scconsumer.gov](mailto:RHall@scconsumer.gov)>; Huber, Christopher <[chuber@ors.sc.gov](mailto:chuber@ors.sc.gov)>; Pittman, Jenny <[jpittman@ors.sc.gov](mailto:jpittman@ors.sc.gov)>; [court.walsh@nelsonmullins.com](mailto:court.walsh@nelsonmullins.com); Weston Adams <[weston.adams@nelsonmullins.com](mailto:weston.adams@nelsonmullins.com)>; [Richard@rlwhitt.law](mailto:Richard@rlwhitt.law); Mitchell Willoughby <[mwilloughby@willoughbyhoefer.com](mailto:mwilloughby@willoughbyhoefer.com)>; Tracey Green <[TGreen@Willoughbyhoefer.com](mailto:TGreen@Willoughbyhoefer.com)>; Parker, Connor <[cjparker@scconsumer.gov](mailto:cjparker@scconsumer.gov)>; J. Blanding Holman <[bholman@selcsc.org](mailto:bholman@selcsc.org)>; [kmixson@selcsc.org](mailto:kmixson@selcsc.org); [Eclancy@selcsc.org](mailto:Eclancy@selcsc.org)  
**Subject:** CHOD - Order Holding Prefiling in Abeyance - DN 2021-88-E -Order No. 2021-96-H

To the Parties:

Attached, please find my Chief Hearing Officer’s Directive in this matter.

Regards,

David Butler